

REMARKS

In the Final Office Action, the Examiner rejected claims 1-22. This response neither amends nor cancels any claims. As such, claims 1-22 remain pending. Applicants respectfully request reconsideration of the pending claims in view of the following remarks.

Claims 7 and 22

In the Office Action Summary accompanying the Final Office Action, the Examiner indicated that claims 1-22 were rejected. However, in the body of the Final Office Action, the Examiner failed to present any basis for rejection of claims 7 and 22. Moreover, in an Office Action mailed on August 9, 2007, the Examiner indicated claims 7 and 22 included allowable subject matter, but that they were rejected for depending from rejected claims 1 and 19, respectively. This objection and indication of allowable subject matter was not carried forward in either the Office Action mailed February 8, 2008, or in the current Final Office Action, mailed August 19, 2008. If the Examiner intended to reject claims 7 and 22, Applicants respectfully request that a formal rejection with specific citation to prior art be made in a new Non-Final Office Action so that Applicants have an opportunity to address any newly made rejections. Alternatively, Applicants respectfully request that the Examiner provide an indication of allowable subject matter for claims 7 and 22.

Claim Rejections under 35 U.S.C. § 103(a)

In the Office Action, the Examiner rejected claims 1, 6, 13, and 17-20 under 35 U.S.C. § 103(a) as unpatentable over Mantha et al., U.S. Publication No. 2004/0023622 (hereinafter “the

Mantha reference”), in view of Lachtar et al., U.S. Publication No. 2003/0125039 (hereinafter “the Lachtar reference”). The Examiner further rejected claims 8 and 10 under 35 U.S.C. § 103(a) as being unpatentable over the Mantha reference in view of the Lachtar reference and further in view of Kang, U.S. Publication No. 2001/0016503 (hereinafter “the Kang reference”). Applicants respectfully traverse these rejections.

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (B.P.A.I. 1979). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 180 U.S.P.Q. 580 (C.C.P.A. 1974). However, it is not enough to show that all the elements exist in the prior art since a claimed invention composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). It is important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. *Id.* Specifically, there must be some articulated reasoning with a rational underpinning to support a conclusion of obviousness; a conclusory statement will not suffice. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Indeed, the factual inquiry determining whether to combine references must be thorough and searching, and it must be based on *objective evidence of record*. *In re Lee*, 61 U.S.P.Q.2d 1430, 1436 (Fed. Cir. 2002).

Omitted Features of Independent claims 1, 13, and 19

Independent claim 1 recites, *inter alia*, “a scheduler configured to receive an indication to allocate the un-utilized transmission power from the first wireless service of the first industry standard wireless system to a second wireless service of a second industry standard wireless system and utilize the indication *to allocate the un-utilized transmission power for the second wireless service* and wherein the first industry standard wireless system and the second industry standard wireless system are *distinct* industry standard wireless systems.” (Emphasis added). Similarly, independent claim 13 recites, *inter alia*, “*allocating transmission power* to the second industry standard wireless system from the first industry standard wireless system for at least one communication channel based on an indication of transmission power that is un-utilized by the first industry standard wireless system and wherein the first industry standard wireless system and the second industry standard wireless system are *distinct* industry standard wireless systems.” (Emphasis added). Likewise, independent claim 19 recites, *inter alia*, “providing an indication *to allocate non-utilized transmission power* from the first industry standard wireless system to the second industry standard wireless system to a scheduler and wherein the first industry standard wireless system and the second industry standard wireless system are *distinct* industry standard wireless systems.” (Emphasis added).

The Examiner admitted that the Mantha reference fails to teach power sharing between *a first and a second industry standard wireless system*. See Final Office Action, page 3. Indeed, the Mantha reference, at best, teaches power sharing between *two services* (voice and data) signals of *a single wireless system*. See Mantha, FIG. 5; paragraph 11, lines 1-2, paragraph 48,

lines 1-6, and paragraph 88, lines 15-18. To remedy this admitted deficiency, the Examiner has relied on the Lachtar reference to teach a first and a second industry wireless standard wireless system. *See* Office Action, page 3. Applicants assert, however, that the Lachtar reference does not disclose such features and, therefore, fails to overcome the admitted deficiencies of the Mantha reference.

In particular, the Lachtar reference only teaches utilizing a *single industry standard wireless system* with multiple base station controllers (BSC 104 and BSC 106) and base station transceiver systems (BTS 108a&b and BTS 112a&b). *See* Lachtar, FIG. 1; paragraph 20, lines 4-7. The Examiner seems to believe that because the multiple base station transceiver systems may have different coverage areas that they are operating according to two distinct industry wireless standards (*see* Final Office Action, page 3, lines 7-8). However, such an interpretation of the Lachtar reference is clearly in error. Indeed, Applicants respectfully assert that one of ordinary skill in the art would not interpret “distinct industry standard wireless systems” as referring to distinct coverage areas, as no support for such an interpretation can be found in the specification of the instant application or the prior art. Thus, distinct coverage areas cannot reasonably be considered to be the same as distinct industry standard wireless systems.

Furthermore, the Lachtar reference specifically describes a communication system 100 that operates “according to the TIA/EIA/IS95 CDMA standard, or subsequent versions thereof, or the TIA/EIA/IS2000 CDMA standard.” *Id.* (emphasis added). Therefore, the system 100 of Lachtar to which the Examiner cites utilizes only *a single industry wireless standard*, i.e., *either*

an IS95 or IS2000 CDMA standard. As such, Applicants respectfully assert the Lachtar reference does not disclose, teach or even suggest power sharing between a first and a second industry standard wireless system wherein the first and second industry standard wireless systems are *distinct industry standard* wireless systems, as recited in claims 1, 13, and 19.

For at least these reasons, Applicants assert that the Lachtar reference fails to overcome the admitted deficiencies of the Mantha reference. Therefore, neither the Mantha reference, nor the Lachtar reference, taken alone or in hypothetical combination, disclose, teach or suggest all the features of the independent claims and cannot support a *prima facie* case of obviousness under Section 103. Accordingly, Applicants respectfully request withdrawal of the Section 103 rejection of independent claims 1, 13, and 19, and allowance of independent claims 1, 13, 19, as well as all claims depending therefrom.

Claims 2-5, 14-16, and 21

The Examiner applied the Jeon et al., U.S. Publication No. 2004/0253928 (hereinafter “the Jeon reference”) in combination with the Mantha and Lachtar references to reject dependent claims 2-5, 14-16, and 21. Applicants respectfully assert that claims 2-5, 14-16, and 21 are allowable based on their dependency from allowable independent claims 1, 13, and 19. As discussed above with respect to the independent claims, the Mantha reference and the Lachtar reference, taken alone or in hypothetical combination, fail to teach or show all of the features of independent claims 1, 13, and 19. The Jeon reference fails to obviate the deficiencies of the Mantha reference and the Lachtar reference. Similar to the Mantha reference, the Jeon reference

is directed to power allocation between a real-time service, such as voice or video, and a non-real-time service, such as a packet service of a single system. *See* Jeon, paragraphs 5-7 and 28. Applicants are unaware of, and the Examiner has not cited to anything in the Jeon reference that discloses power sharing between a first and a second industry standard wireless system, wherein the systems are *distinct*, as recited in independent claims 1, 13, and 19. Furthermore, Applicants assert that the Jeon reference also does not teach or show either *allocating transmission power* or providing an indication to *allocate non-utilized transmission power* from the first industry standard wireless system to the second industry standard wireless system, as recited in independent claims 1, 13, and 19. As such, the Jeon reference fails to obviate the deficiencies of the Mantha reference and the Lachtar reference. Accordingly, Applicants respectfully request withdrawal of the Section 103 rejection and allowance of claims 2-5, 14-16, and 21.

Omitted Features of claim 8

Claim 8 recites, *inter alia*, “a scheduler configured to receive an indication to allocate un-utilized transmission power to the second baseband system from the first baseband system and to utilize the indication to *allocate un-utilized transmission power* for the second plurality of communication channels and wherein the first baseband system and the second baseband systems are *distinct* baseband systems.” (Emphasis added).

The Examiner has rejected independent claim 8 under similar reasoning to that applied to independent claims 1, 13, and 19. Accordingly, arguments analogous to those presented above with respect to the Mantha and Lachtar references can be applied to the prior art failing to teach

allocating *un-utilized transmission power* between a first and a second baseband system where the baseband systems are *distinct*. The Kang reference, also applied in the rejection of claim 8, fails to cure the deficiencies of the Mantha reference and the Lachtar reference noted above. The Kang reference is apparently relied upon merely as teaching a channel card configured to communicate with a plurality of wireless units. *See* Office Action, page 8. However, Applicants are unaware of, and the Examiner has not cited to anything in the Kang reference that discloses allocating *un-utilized transmission power* between a first and a second baseband system where the baseband systems are *distinct* baseband systems.

Accordingly, Applicants respectfully assert the Mantha, Lachtar, and Kang references, taken alone or in hypothetical combination fail to teach or show all of the features of independent claim 8. Applicants, therefore, assert that independent claim 8, as well as all claims depending therefrom, are allowable. Accordingly, Applicants respectfully request withdrawal of the rejection of independent claim 8, and further request allowance of independent claim 8, and all claims depending therefrom.

Claim 9

The Examiner has applied Hongo et al., U.S. Publication No. 2003/0022639 (hereinafter “the Hongo reference”) in combination with the Mantha and Lachtar references to reject dependent claim 9. Applicants respectfully assert that claim 9 is allowable based on its dependency from claim 8. As discussed above, the Mantha, Lachtar, and Kang references, taken alone or in hypothetical combination, fail to disclose the allocation of *un-utilized transmission*

power for the second plurality of communication channels and wherein the first baseband system and the second baseband systems are *distinct* baseband systems. The Hongo reference fails to obviate the deficiencies of the Mantha, Lachtar, and Kang references with respect to independent claim 8. Specifically, the Hongo reference is directed to a peak limiter. *See* Hongo, paragraph 1. The Hongo reference, however, does not disclose allocation of *un-utilized transmission power* for the second plurality of communication channels and wherein the first baseband system and the second baseband systems are *distinct* baseband systems, as set forth in claim 8. As such, the Hongo reference fails to obviate the deficiencies of the Mantha, Lachtar, and Kang references. Accordingly, Applicants respectfully request withdrawal of the rejection and allowance of claim 9.

Claims 11-12

Applicants respectfully assert that claims 11-12 are allowable based on their dependency from claim 8. As discussed above, the Mantha, Lachtar, and Kang references, taken alone or in hypothetical combination, fail to disclose the allocation of *un-utilized transmission power* for the second plurality of communication channels and wherein the first baseband system and the second baseband systems are *distinct* baseband systems. The Jeon reference fails to obviate the deficiencies of the Mantha, Lachtar, and Kang references with respect to independent claim 8. Specifically, the Jeon reference is directed to power allocation between a real-time service, such as voice or video, and a non-real-time service, such as a packet service of a single system. *See* Jeon, paragraphs 5-7 and 28. The Jeon reference, however, does not disclose allocation of *un-utilized transmission power* for the second plurality of communication channels and wherein the

first baseband system and the second baseband systems are *distinct* baseband systems as set forth in claim 8. Accordingly, the Jeon reference fails to obviate the deficiencies of the Mantha, Lachtar, and Kang references. Accordingly, Applicants respectfully request withdrawal of the rejection and allowance of claims 11-12.

Conclusion

In view of the remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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